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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 546

BENNIE SABLowsKY,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

No. 547

LEONARD SABLowsKY,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRITS OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA.

SAMUEL G. WAGNER,
DOROTHEA M. WAGNER,
ALBERT MARTIN,

Counsel for Petitioner.



INDEX.

SUBJECT INDEX.

| | Page |
|--|------|
| Petition for writs of certiorari | 1 |
| Proceedings | 2 |
| (a) Lower court | 2 |
| (b) Superior Court | 3 |
| (c) Supreme Court | 3 |
| Summary statement | 3 |
| Jurisdiction | 3 |
| Questions involved and reasons for allowance of writ | 4 |

CASES CITED.

| | |
|---|------|
| <i>Kawato, Ex parte</i> , 87 L. Ed. 94 | 4 |
| <i>Minneapolis, St. P. & S. S. M. Ry. Co. v. Rock</i> , 279 U. S. 410 | 3, 4 |
| <i>Quirin, Ex parte</i> , 87 L. Ed. 87 | 4 |
| <i>St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird, Admr.</i> , 243 U. S. 592 | 4 |

OTHER AUTHORITIES CITED.

| | |
|--|---|
| Cyclopedia Law Dictionary (3d Ed.), pg. 147 | 5 |
| Judicial Code, Sec. 237, 28 U. S. C. A. 344(b) | 3 |



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**PETITION FOR WRITS OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA.**

*To the Honorable Harlan Fiske Stone, Chief Justice of the
Supreme Court of the United States, and to the Associ-
ate Justices of the Supreme Court of the United States:*

The petitioners, BENNIE SABLowsKY and LEONARD SABLowsKY, severally pray the issuance of Writs of Certiorari

to review the judgments of the Superior Court of Pennsylvania whose judgments were made final by the denial of leave to appeal by the Supreme Court of Pennsylvania.

Proceedings.

a. LOWER COURT.

The petitioners were indicted on May 14, 1940, in the Court of Quarter Sessions of the Peace for the County of Allegheny, Pennsylvania, for alleged bribery, perjury and corrupt solicitation in connection with furnishing bail for release of a prisoner in the Allegheny County Jail (R. 4-8), to which, on May 14, 1940, they signed a waiver of arraignment and plea of guilty (R. 8).

About two months after the entry of the pleas, and prior to sentence, a petition was presented to the judge before whom the pleas were entered requesting leave to withdraw the guilty pleas. This judge told counsel to present the petition at the time of sentence. A few months after that the petition was again presented to two other presiding judges but they felt it should be presented to the judge who received the guilty pleas. But, he already had told counsel to wait until sentence (R. 48).

On November 14, 1941, also prior to sentence, the petitioners filed a Petition to Withdraw Plea of Guilty and Enter Plea of Not Guilty (R. 9-15) which petition was refused on that day (R. 15). The colloquy which took place at the time of the presentation of the motion appears on pages 16-17. On December 1, 1941, a Supplemental Petition for Leave to Withdraw Plea filed (R. 18-25), which petition was refused on the same day (R. 25) although at the same time the petition was allowed to be filed *nunc pro tunc* as of November 24, 1941; and an answer was filed to the supplemental petition.

On December 4, 1941, the judge (Patterson, J.) filed a paper captioned Remarks of Court and Sentence in which he sentenced each of the petitioners herein to pay a fine of \$500.00, the costs of prosecution and undergo imprisonment in the Allegheny County Workhouse for a period of eight months (R. 31-32); the Relevant Docket Entries show that sentence was imposed on December 1, 1940. An order for supersedeas was filed December 3, 1941, dated December 9, 1941 (R. 33). A formal opinion was filed by Judge Patterson on December 19, 1941 (R. 33-38).

b. SUPERIOR COURT OF PENNSYLVANIA.

Appeals were taken to the Superior Court of Pennsylvania on December 1, 1941 (R. 39). The convictions were affirmed on July 27, 1942, the opinion being written by Judge Joseph Stadtfeld (R. 43-46).

c. SUPREME COURT OF PENNSYLVANIA.

A Petition For the Allowance of An Appeal From the Superior Court was filed with the Supreme Court of Pennsylvania on August 3, 1942 (R. 48-54), which petition was refused on September 29, 1942 (R. 55).

Summary Statement of the Matter Involved.

Reference is hereby made to the petition filed in the Supreme Court of Pennsylvania (R. 48-54).

Jurisdiction.

The Supreme Court is asked to exercise its jurisdiction under *Section 237 of the Judicial Code, 28 U. S. C. A. 344 (b)*. The judgment of the Superior Court of Pennsylvania, after refusal of petition to review by the Supreme Court of Pennsylvania, made it a judgment of the "highest court" of Pennsylvania: *Minneapolis, St. P. & S. S. M.*

Ry. Co. v. Rock, 279 U. S. 410. The federal constitutional question was raised (R. 24): *St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird, Adm. of Miller*, 243 U. S. 592, 597.

Questions Involved and Reasons for Allowance of Writ of Certiorari.

WHERE A DEFENDANT PLEADS GUILTY AND MAKES VARIOUS ATTEMPTS TO WITHDRAW THE PLEA, THE FIRST ATTEMPT BEING MADE ABOUT TWO MONTHS AFTER THE PLEA, AND THE COURT REFUSES TO ACCEPT THE PETITION UNTIL SENTENCE, WHICH OCCURS ABOUT EIGHTEEN MONTHS AFTER THE PLEA, AND THE COURT PLACES ITS SUBSEQUENT REFUSAL ON GROUNDS OF LACHES FOR WAITING EIGHTEEN MONTHS, IS DEFENDANT DENIED HIS CONSTITUTIONAL RIGHT OF DUE PROCESS.

The state courts treated the petitioners as outlaws although there never was a trial on the merits of the cases. Hysteria and guess appears to have been substituted for tempered justice. All that the petitioners requested was a jury trial to determine their innocence or guilt. Certainly that is not asking too much. Where would the Commonwealth have been harmed by allowing the petitioners to withdraw their formal pleas? Protection and not usurpation of the right of due process should be the watchword of the courts.

Even known and undisputed saboteurs in time of war are accorded full rights to the extent of having the highest court in the realms called to sit in special session: *Ex Parte Richard Quirin*, Law ed. Advance Opinions, Vol. 87, pg. 1 (opinion filed October 29, 1942). A Japanese resident alien was held not to be precluded from bringing or prosecuting actions in our courts even though the country of his allegiance is at war with our country: *Ex parte Kawato*, Law. Ed. Advance Opinions, Vol. 87, pg. 94 (de-

cided November 9, 1942). This is no time for the revival of the early theory of caput lupinum which has long been relegated to an historical limbo: *Cyclopedic Law Dictionary* (3rd Ed.), pg. 147.

The right of a defendant to withdraw a plea of guilty prior to trial as a denial of due process has not been passed on by the Supreme Court of the United States.

Wherefore, your petitioners respectfully pray that they be afforded the following relief:

(1) Grant and issue a writ of certiorari upon the Superior Court of Pennsylvania to the end that this cause may be reviewed and determined by your Honorable Court and that the judgment of the Superior Court of Pennsylvania may be reversed and that your petitioners may have such further relief as your Court may deem proper in the premises.

Dated at Pittsburgh, Pennsylvania, November 24, 1942.

Respectfully submitted,

SAMUEL G. WAGNER,
DOROTHEA M. WAGNER,
ALBERT MARTIN,

By S. G. WAGNER,
Attorneys for Petitioners.